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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,248	07/10/2003	Donald E. Weder	8403.916	4740

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/619,248	WEDER, DONALD E.	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of Applicant's IDSs received 10 July 2003 and 10 August 2004.

Election/Restrictions

Applicant's election of the species combination of - the extension's edge extending beyond the outer periphery of the sheet and bonding material on the inner surface of the wrapper - in the reply filed on 14 October 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 11, 12, and 15 are withdrawn from examination because they are drawn to non-elected species.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "outer edge of the decorative extension extends beyond at least a portion of the outer peripheral edge of the sheet of material" of claim 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-8, 10, 13, and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Meys (G 8905250.1) in view of Thaler (US Des. 44,501).

As to claim 1, Meys discloses a plant package comprising a pot covered with a decorative cover (Figs. 1-4), the plant package with a decorative wrapper comprising a sheet of material (1 of Figs. 1-4) with surfaces and an outer edge, a flower pot with a flower (12 of Figs. 1-4), and a securing element (7 of Figs. 1-4). Not disclosed is the sheet having a central decorative portion that has a different pattern/design than the peripheral decoration, the central portion having a

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greater maximum width than the peripheral portion, and wherein due to the difference between the patterns the decorative cover of the plant package appears to be constructed from at least two separate sheets of material. Thaler, however, discloses a sheet having a central decorative portion that has a different pattern/design than the peripheral decoration, the central portion having a greater maximum width than the peripheral portion, and wherein due to the difference between the patterns the decorative cover of the plant package appears to be constructed from at least two separate sheets of material. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the plant package of Meys by having the pattern/design of Thaler so as to create an aesthetic appeal or appearance that may be of interest to consumers. MPEP 2113 (Product -by-Process Claims) states that “[i]f the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” Here, the instant plant package is unpatentable over Meys in view of Thaler.

As to Claim 2, Meys in view of Thaler further disclose the outer peripheral edge being non-linear (Figs. 1-4 of Meys).

As to claim 4, the limitations of claim 1 are disclosed as described above. Not disclosed is the inner boundary of the peripheral decoration being non-linear. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the plant package of Meys as modified by Thaler by making the inner boundary of the peripheral decoration non-linear so as to create an aesthetic appeal or appearance.

As to Claim 5, Meys in view of Thaler further disclose the inner boundary of the peripheral decoration being linear (see Thaler).

As to Claim 6, Meys in view of Thaler further disclose the maximum width of the peripheral decoration being 5% to 50% of the width of the central decorative portion (see Thaler where the central portion is the portion that appears to be the top sheet).

As to Claims 7 and 13, Meys in view of Thaler further disclose an extension attached to the sheet and having an outer edge that is beyond a portion of the outer peripheral edge (10 or 11 of Figs. 1 and 5 of Meys).

As to claims 8 and 14, Meys in view of Thaler further disclose an adhesive bonding material (inherent from translation in English on page 6, lines 5-9 from "is mounted").

As to Claim 10, Meys in view of Thaler further disclose the wrapper being circular (Figs. 1-4 of Meys).

Claims 3 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Meys (G 8905250.1) in view of Thaler (US Des. 44,501) in further view of Charrin (FR 2619698; document DM on the first 1449 submitted by Applicant).

As to claims 3 and 9, the limitations of claim 1 are disclosed as described above. Not disclosed is the wrapper outer edge being linear, rectangular. Charrin, however, discloses a plant package with the wrapper's outer edge being linear, rectangular (see Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the plant package of Meys as modified by Thaler by making the wrapper's outer edge linear and rectangular so as to create an aesthetic appeal or appearance.

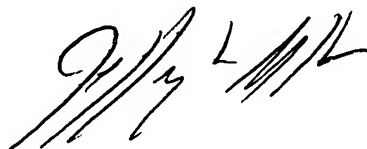
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP2003-9660 discloses in the prior art a wrapper made of two sheets. Kao et al., Du Grosriez, and Hodges disclose in the prior art various designs that give the appearance of being two sheets.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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